IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6512 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
FEBRUARY 05, 2007.

Heard Shri Kaptan, learned counsel for the petitioner and Shri Gadkari, learned counsel for respondent No.1. Respondents No. 2 & 3 are served but there is no appearance.

Shri Kaptan, learned counsel states that the petitioner only wanted to lead evidence to claim installments to clear the debt amount. He argues that on 9.12.2005, he could not make himself available at Gadchiroli when the matter was called out and therefore the Court below has discarded his evidence entirely. He contends that in these circumstances, one opportunity should be given to the petitioner. He states that on same date at 2.00 PM the petitioner presented himself before the lower Court and moved an application for seeking permission to examine himself but that application was rejected as

infructuous.

Shri Gadkar, learned counsel for respondent No.1 states that the petitioner is only interested in delaying the matter. He further states that there is no written statement filed on merit and if this Court is inclined to grant any opportunity to him, he should at least be directed to deposit 50% of the amount outstanding and recoverable from him.

I find that the petitioner only wanted to lead evidence to claim installment and on 9.12.2005 he made himself available in the Court though belatedly. In these circumstances, the Court below could have recalled its earlier order passed below Exh. 37 and could have permitted the petitioner to enter witness box and lead his evidence. In the circumstances, I find that prejudice has been caused to the petitioner by declining him said opportunity. However, it cannot be ignored that the suit is pending since 2004 and bank is claiming amount of Rs.6,08,818/-. Hence, the interest of Bank needs to be protected in the matter and the Respondent – Bank cannot be blamed for whatever has

transpired on 9.12.2005. Hence, the petitioner shall pay Respondent No.1 cost of Rs.5,000/- within a period of two weeks from today and if said cost is paid, the Court below shall permit him to enter witness box for cross examination by plaintiff – Bank before it. Subject to such deposit, the impugned orders dated 9.12.2005 passed below Exh. 37 and Exh. 40 are hereby quashed and set aside. Writ Petition is disposed of accordingly.

JUDGE

*GS.